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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re B.M., a Person Coming Under the  
Juvenile Court Law.

B227810  
(Los Angeles County  
Super. Ct. No. CK 82416)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.M.,

Defendant and Appellant.

Appeal from an order of the Superior Court of Los Angeles County. Valerie Skeba, Juvenile Court Referee. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

\* \* \* \* \*

Sixteen-year-old B.M. appeals from the trial court's disposition order removing her from her mother's home and placing her with her maternal great grandmother. B.M. does not appeal the trial court's jurisdictional findings declaring B.M. a dependent based on the physical abuse of B.M.'s younger brother by her mother's male companion and mother's failure to protect the boy. We find substantial evidence supports the trial court's disposition and therefore affirm the order.

### **BACKGROUND**

B.M. is the eldest of mother's three children. The two younger children are B.M.'s half siblings, S.K., now nine years old, and T.K., who is eight years old. R.B. is mother's fiancé and lived with the family off and on for about five years except during times when he was incarcerated. The family came to the attention of the Department of Children and Family Services after the father of S.K. and T.K. made a referral, claiming that R.B. had whipped T.K. with a belt, leaving bruises on his legs.

At the combined jurisdiction and disposition hearing, the court accepted into evidence the Department's reports and the testimony of B.M. The court declared all three children to be dependents under Welfare & Institutions Code section 300, subdivision (a), pursuant to a mediated agreement signed by mother and the Department. The children's counsel joined the Department and mother's counsel in asking the court to sustain the agreed-upon amended petition. The stipulated amendments to the petition included findings that mother struck T.K. with a belt and allowed R.B. to strike T.K. with a belt or hands as a form of discipline, and: "On an occasion in May 2010, the children's mother allowed her companion, [R.B.], to repeatedly strike [T.K.]'s buttocks, legs and thigh with a belt, causing swelling and bruising, and making the child fear [R.B.] The mother's use of inappropriate physical discipline, and her conduct in having her companion inappropriately physically discipline [T.K.], place [T.K.] at risk of harm and create the risk of similar harm to the children [B.M.] and [S.K.]"

The reports of the Department provided ample evidence to support the amended petition. Indeed, the trial court found the evidence supported jurisdictional findings "more serious" than those in the sustained petition. A sheriff's deputy, the principal of

T.K.'s school, and a nurse at a nearby medical center each reported that T.K. said R.B. hit him with a belt and then held him upside down by the leg or ankle while continuing to strike him with the belt. T.K. had been preparing to take a shower before R.B. entered his room, and T.K. was wearing only boxer shorts during the belting. The sheriff's deputy and T.K.'s father described large bruises on T.K.'s ankle and thigh. T.K. told a social worker he did not like R.B.

B.M. witnessed the belting and reported that after R.B. struck T.K. with a belt the first time, T.K. began to scream and run around the room yelling "no" and trying to get away from R.B. B.M. also saw R.B. grab T.K. and hold him up by one hand while he continued to belt him with the other hand. B.M. said when R.B. finished the beating, T.K. was crying so hard he was panting as if he could not breathe.

Mother had instructed R.B. to punish T.K. because he had misbehaved at school. Mother denied the belting left bruises on T.K. She also denied knowing it was improper to hit children with a belt. Mother said her children love R.B. and that the father of S.K. and T.K. created the problem because he was upset that T.K. referred to R.B. as "Dad." Mother was defensive of R.B., despite knowing he was on probation for conspiracy to sell marijuana and there were child cruelty charges pending against him as a result of his beating of T.K.

B.M. reported that mother was usually the one who whipped T.K. with a belt. T.K. reported that his mother was always at home when R.B. whipped him, and she would tell him before the beating, "[Y]ou know who you are gonna get whooped by." Everyone in the family agreed that both R.B. and mother had used a belt to whip T.K. many times before the incident that led to the referral to the Department.

### **STANDARD OF REVIEW**

A child may not be removed from the physical custody of her parent unless the trial court finds by clear and convincing evidence that (1) there is a substantial danger to the child's physical health, safety, protection or physical or emotional well-being if she is returned home, and (2) there are no reasonable means to protect the child without removing her from the parent's physical custody. (Welf. & Inst. Code, § 361, subds. (c))

and (d).) We review the record in the light most favorable to the trial court's order to determine whether there is substantial evidence to support the dispositional order. (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

### **DISCUSSION**

B.M. contends the evidence does not support the removal order because she is older than T.K., strong, independent, and not fearful of R.B., and she has never been physically abused by him or her mother. We find substantial evidence supports the disposition order removing B.M. from her mother's home.

B.M. testified that she thought what R.B. did to her brother was "right." She also testified her mother did the right thing by not intervening to stop the beating. B.M. testified that after the beating, she saw her younger sister, S.K., holding T.K., cuddling him and appearing sad. B.M. testified that when she herself saw T.K. crying so hard he could barely breathe, she "didn't really have a feeling"; she denied being scared and said she was "a little bit" sad but "not a lot," explaining, "[W]e knew what he had done." When the trial court asked B.M. if T.K.'s behavior at school made it "okay with [her]" for R.B. to beat him as he had, B.M. replied, "Yes."

The trial court found B.M. was "clearly aligned with mother," and this finding is supported by B.M.'s testimony that she and her mother were "very close, kind of like best friends," and her statement to a Department representative that the family was "close to one another and stick behind each other." When asked what she would do if R.B. tried to hit her, B.M. testified, "I would probably tell someone, a family member or relative." We agree with the Department that this testimony was equivocal as to whether B.M. would report any inappropriate discipline, and if she did, she would be most likely to report it to her mother; the evidence is overwhelming that mother, at this point, cannot be relied upon to protect B.M.

The trial court acknowledged that B.M. testified she had not been the victim of abuse by mother or R.B. but reasoned, "I'm not sure that we can really determine what, if anything, has occurred in the home or what more has occurred in the home because I think [B.M.]'s statements are particularly guarded with respect to what's occurred in the

home.” Further, the court reasoned, “[A]pparently [B.M.] thinks that this type of discipline is okay. And . . . that is very disturbing to me that somebody could say they watched their sibling be disciplined like this and not feel anything. And so I’m concerned that we’re starting [B.M.] down the road to thinking that physical discipline and abuse is an okay thing in a home, and it is not. [¶] . . . [¶] . . . I’m concerned about the level of violence that occurs in the home, particularly that [R.B.]’s being allowed to discipline the children like this and that mother has also engaged in physical discipline and that it is considered acceptable.”

The trial court’s conclusions that there was substantial danger to B.M. if she were to be returned home to her mother, and there were no means to protect B.M. without removing her from mother’s home, are supported by substantial evidence. We are mindful that we must defer to the trial court’s factual assessment of the reliability of B.M.’s testimony that R.B. did not present a risk of harm to her. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) “We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses.” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) Accordingly, we affirm the disposition order removing B.M. from her mother’s home.

### **DISPOSITION**

The disposition order is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.